

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2235.05
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	March 17, 2005
DATE OF REPORT:	April 13, 2005
REQUEST FOR RECONSIDERATION:	n/a
DATE OF CLOSURE:	September 20, 2005

COMPLAINT ISSUES:

Whether the Jay School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to:

- (a) implement the IEP while the student was placed in an Alternative Placement Center;
- (b) provide the parent with weekly grade checks; and
- (c) provide a second set of books for the grading period.

511 IAC 7-23-1(f) by failing to comply with a request from a parent to inspect and review the student's educational record without unnecessary delay and before any meeting regarding the student's IEP.

During the course of this investigation, two additional issues were identified:

511 IAC 7-21-2 by failing to ensure appropriately licensed teachers are available to supervise special education and related services when students are placed at the School's Alternative Placement Center.

511 IAC 7-27-3(a)(3) by failing to ensure at least one of the student's general education teachers participated in the case conference committee meeting convened on September 2, 2004.

FINDINGS OF FACT:

1. The Student has been identified as having an emotional disability and a hearing impairment and has been determined eligible for special education and related services.
2. The Student was assigned to the local school district Alternative Placement Center (APC) on February 3, 2005 (one day) for truancy. According to the APC guidelines that were mailed to the Student's parents on January 20, 2005, it is the Student's responsibility to notify all teachers of the Student's assigned placement at the APC and to arrange to have assignments sent to the APC. It is undisputed that the Student came to the APC unprepared with no books or homework. As a result, pursuant to the APC guidelines, the Student had to spend the day in a character education class with the opportunity to participate in a community service activity. The School considers the Student's placement at the APC as an alternative to suspension that does not count toward the allowable 10 days of suspension as stated in 511 IAC 7-29-1.

3. The School acknowledges that the APC Supervisor is not informed whether a student assigned to the APC has an IEP. In addition, there are no appropriately licensed teachers available to supervise special education and related services. The Student's IEP was not implemented at the APC on February 3, 2005.
4. The Complainant arrived at school unannounced on September 2, 2004. On September 2, the Complainant, acting Dean of Students, the school counselor, and the Student's teacher of record (TOR) met to discuss the Student's education situation. Notes of the meeting were recorded on the School's Case Conference Notes page dated September 2, 2004, and signed by the three school personnel. The other page attached is the final page of the School's Case Conference Report indicating that the Student's IEP has been developed by the case conference committee (CCC) by mutual agreement and is signed by the Complainant. The CCC notes state, "Requested weekly grade checks to be faxed to [the Complainant]." The notes also state, "Also requested a 2nd textbook in each class to keep at home. [The TOR] is checking on that possibility."
5. Since September 2, 2004, the School has failed to document whether it has consistently provided weekly grade checks, particularly during the first semester of the 2004-2005 school year. The School has been more consistent with the provision of grade checks during February and March 2005. With regard to the provision of a second set of textbooks, the Student had been provided with a second set of texts, for the classes it is possible to do so, during most of the first semester, but allegedly received texts for the second semester at the end of the first grading period of the second semester. The School is unable to document to what extent it has provided the Student with a second set of texts.
6. The Complainant made telephone contact with the local Special Education District's special education clerk on February 3, 2005. The Complainant alleges that a request was made to have the Student's entire educational record sent to the Complainant by mail before the Student's CCC meeting scheduled for March 8, 2005. The Special Education Clerk's phone notes indicate that the Complainant specifically requested a copy of the Student's latest CCC Report/IEP and the Student's psychological report from November 2001. The Complainant acknowledges receiving both in the mail soon after the telephone conversation.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate that the School failed to implement the Student's IEP when the Student was assigned to the APC on February 3, 2005. The IEP should have been implemented since the Student was not serving a day of suspension towards the allowable 10 days of suspension under Article 7. Findings of Fact #4 and #5 indicate that the School has to some extent implemented the Student's IEP with respect to the weekly grade checks and the provision of a second set of textbooks, but cannot document a consistent implementation since September 2, 2004. Furthermore, the notes from the meeting convened on September 2, 2004 are ambiguous as to what exactly is to be implemented, how, and by whom. Where an ambiguity exists in an IEP, the ambiguity will be construed against the School that is responsible for its development and implementation. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the APC and the provision of weekly grade checks and a second set of textbooks.
2. Finding of Fact #6 indicates that the School did not fail to comply with the Complainant's request to obtain a copy of the Student's latest CCC Report/IEP and psychological evaluation report without unnecessary delay and before the Student's CCC meeting scheduled for March 8, 2005. Therefore, a violation of 511 IAC 7-23-1(f) is not found.

3. Finding of Fact #3 indicates that the School failed to ensure that appropriately licensed teachers were available to supervise special education and related services when the Student was placed in the APC. Therefore, a violation of 511 IAC 7-21-2 is found.
4. Finding of Fact #4 indicates that the School failed to utilize the CCC to review and revise the Student's IEP on September 2, 2004. The School and the Complainant convened an impromptu CCC meeting without the participation of one of the Student's general education teachers. A guidance counselor does not satisfy the requirement for a general education to be present when a student will, or may be participating in the general education environment. Therefore, a violation of 511 IAC 7-27-3(a)(4) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Jay School Corporation shall:

1. Send a written memorandum to all school administrators and special education personnel regarding compliance with the requirement of 511 IAC 7-27-3(a)(3). A copy of the memorandum and a list of all who receive it shall be submitted to the Division no later than May 20, 2005.
2. Convene the Student's case conference committee to determine whether and to what extent the Student will be provided with weekly grade checks and a second set of textbooks. If the case conference agrees to continue their provision, then the IEP shall be revised to specifically state what is to be provided, by whom, and how it will be documented. A copy of the CCC Report and IEP shall be submitted to the Division no later than May 20, 2005.
3. Review and revise the Alternative Placement Center guidelines to coordinate and ensure the provision of special education and related services supervised by appropriately licensed teachers when a special education student is assigned to the Alternative Placement Center. In addition, the guidelines shall make clear that when the School places a student with a disability at the APC, this is the same as a placement in in-school suspension (ISS) pursuant to 511 IAC 7-29-1(g). If the IEP is not implemented, it is, in essence, a temporary removal of the student from the student's current placement, a suspension. A copy of the revised guidelines and a list of all who receive them shall be submitted to the Division no later than May 20, 2005.